

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO ALLEGED)	
UNAUTHORIZED RATES OF WESTERN)	CASE NO. 90-030
KENTUCKY GAS COMPANY)	

O R D E R

This matter arising upon petition of Western Kentucky Gas Company, a division of Atmos Energy Corporation ("Western"), filed March 5, 1990 and supplemented on September 10, 1990, for confidential protection of the names of individual gas customers matched with monthly and cumulative volumes of gas delivered to them for use in their commercial enterprises, on the grounds that disclosure of the information is likely to result in competitive injury, and it appearing to this Commission as follows:

On February 22, 1990, the Commission directed Western to file certain information concerning the identity and usage history of several of Western's industrial customers. In its original petition, Western claimed that disclosure of the information would provide valuable information that competitors of its customers could use to gain an unfair business advantage. The Commission ruled that the statutory provision exempting commercial information from the requirements of the Open Records Act only protected information from disclosure to "competitors of the subject enterprise." Since the subject enterprise is Western and

not its customers, the information was not entitled to protection on the grounds set forth.

In its supplemental petition, Western contends that disclosure of the information sought to be protected is also likely to cause Western competitive injury, and it seeks to protect the information on that ground.

807 KAR 5:001, Section 7, protects information as confidential when it is established that disclosure of the information is likely to cause substantial competitive harm to the party from whom the information was obtained. In order to satisfy this test, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

Western has many competitors seeking to capture portions of Western's industrial customer base. These include distributors and other sellers of alternative fuels, as well as promoters of the physical bypass of Western's system. To provide these competitors with customer-specific information concerning the volumes of natural gas being consumed by individually identified customers, as well as the "flexed" or "reduced" rates, would allow these competitors to identify Western's large industrial customers who are extremely "price sensitive" and allow competitors to adjust their prices accordingly in marketing their services to Western's customers. Thus, the information has competitive value

and could be used by Western's competitors to Western's disadvantage.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The names of individual gas customers matched with their monthly and cumulative volumes of gas delivered to them by Western for use in their commercial enterprises, as well as the amount of Western's billings to them, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

2. Western shall, within 10 days of the date of this Order, file an edited copy of the information with the confidential material obscured for inclusion in the public record, with copies to all parties of record.

Done at Frankfort, Kentucky, this 22nd day of October, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director